

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIFTON DAVID STACK,

Defendant.

CR 16-17-BU-DLC-3

*EX PARTE* ORDER

**FILED**

**MAR 06 2017**

Clerk, U S District Court  
District Of Montana  
Missoula

Before the Court is Defendant Clifton Davis Stack's ("Stack") *ex parte* motion for the issuance of writs and subpoenas, and the payment of witness fees by the United States Marshal. (Doc. 151.) Stack seeks the issuance of a writ of habeas corpus ad testificandum as to Lindsey Krystell Hudson and the issuance of a subpoena as to Chandra Ramirez. Stack states that these witnesses are necessary in order to present an adequate defense at his sentencing. Specifically, Stack states that these witnesses will testify in support of his argument for a downward departure based upon his alleged duress at the hands of his co-Defendant, Lester Oxendine, and his minor role in the conspiracy. Stack moves pursuant to Federal Rule of Criminal Procedure 17, which mandates that the Court "must order that a subpoena be issued for a named witness if the defendant shows an inability to pay

the witness's fees and the necessity of the witness's presence for an adequate defense." Fed. R. Crim. P. 17(b). The Court finds that these witnesses are necessary to Stack's defense, and due to his established indigent status (Doc. 22), will grant the motion. *United States v. Smith*, 924 F.2d 889, 896 (9th Cir. 1991) (stating that the standard for necessity is met "if the accused avers facts which, if true, would be relevant to any issue in the case").

Finally, Stack apparently requests that the Court seal this Order. (*See* Doc. 151-1.) The Court acknowledges that Rule 17(b) instructs defendants to file applications for witness fees *ex parte*. *See* Fed. R. Crim. P. 17(b). However, the Court's Order dated December 13, 2016, states that the opposing party must be notified of any anticipated testimony at sentencing, "regardless of the language of Rule 17(b) . . . ." (Doc. 137 at 3.) As such, the Court will seal this Order and Stack's motion for seven days. If Stack would like these documents to remain sealed, he must move for such relief by March 14, 2017, and provide good cause why these documents should remain sealed. *See* L.R. 5.1(b) (stating that leave must be granted to file a document under seal).

Accordingly, IT IS ORDERED that:

(1) Defendant Clifton Stack's Ex Parte Motion for the Issuance of Writs and Subpoenas and Payment of Witness Fees (Doc. 151) is GRANTED;

(2) the Clerk of Court shall issue writs and/or subpoenas for service by the United States Marshal for the witnesses listed below who are to appear as witnesses for Clifton David Stack at his sentencing scheduled for March 24, 2017, at the Russell Smith Federal Courthouse in Missoula, Montana at 10:30 a.m.:

Chandra Ramirez

Lindsay Krystelle Hudson;

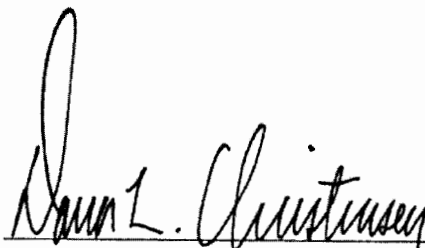
(3) the United States Marshals Service shall pay witness fees and expenses for the witnesses listed below who are scheduled to appear on behalf of the Defendant at the sentencing in Missoula, Montana:

Chandra Ramirez

Lindsay Krystelle Hudson;

(4) the Clerk of Court shall seal this Order and Stack's Motion (Doc. 151) for seven days from the date of this Order. If Stack intends that these documents shall remain sealed, he shall move for leave to file under seal on or before **March 14, 2017**.

Dated this 6<sup>th</sup> day of March, 2017.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", is written over a horizontal line.

Dana L. Christensen, Chief District Judge  
United States District Court